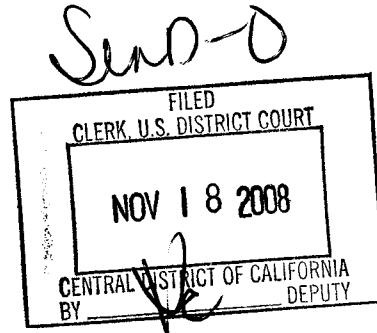


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8 UNITED STATES DISTRICT COURT  
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10 UNITED STATES OF AMERICA, ) Case No. 08-2836M  
11 Plaintiff, ) ORDER OF PRETRIAL DETENTION  
12 v. ) AFTER HEARING  
13 *Francisco Hernandez* ) (18 U.S.C. § 3142(i))  
14 *Guardado*  
15 *Defendant.*  
16

I.

17 A. ( ) Upon motion of the Government in a case that involves:  
18 1. ( ) a crime of violence or an offense listed in  
19 18 U.S.C. § 2332b(g)(5)(B), for which a  
20 maximum term of imprisonment of ten (10)  
21 years or more is prescribed; or  
22 2. ( ) an offense for which the maximum sentence is  
23 life imprisonment or death; or  
24 3. ( ) an offense for which a maximum term of  
25 imprisonment of ten (10) years or more is  
26 prescribed in the Controlled Substances Act,  
27 Controlled Substances Import and Export Act  
28 or Maritime Drug Law Enforcement Act; or

4. ( ) any felony if defendant has been convicted of two or more offenses described in subparagraphs 1-3 above, or two or more state or local offenses that would have been offenses described in subparagraphs 1-3 above if a circumstance giving rise to federal jurisdiction had existed, or a combination of such offenses.

5. ( ) any felony that is not otherwise a crime of violence that involves a minor victim, or possession or use of a firearm or destructive device or any other dangerous weapon, or a failure to register under 18 U.S.C. § 2250.

B. Upon motion ( ) of by the Government ( ) of the Court sua  
sponte, in a case that involves:

1. (  ) a serious risk that defendant will flee;
2. (  ) a serious risk that defendant will
  - a. (  ) obstruct or attempt to obstruct justice;  
or
  - b. (  ) threaten, injure, or intimidate a  
prospective witness or juror or attempt  
to do so.

C. The Government ( ) is (✓) is not entitled to a rebuttable presumption that no condition or combination of conditions will reasonably assure defendant's appearance as required and the safety of any person or the community.

II.

A. (✓) The Court finds by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of defendant as required;

B. (✓) The Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

JTT

The Court has considered:

- A. (  ) the nature and circumstances of the offense(s) charged;
- B. (  ) the weight of the evidence against defendant;
- C. (  ) the history and characteristics of defendant;
- D. (  ) the nature and seriousness of the danger to any person or the community that would be posed by defendant's release;
- E. (  ) the Pretrial Services Report/Recommendation;
- F. (  ) the evidence proffered/presented at the hearing;
- G. (  ) the arguments of counsel.

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1 IV.  
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3 The Court concludes:  
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5 A.  Defendant poses a risk to the safety of other persons  
6 and the community based on: defendant  
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8 prior Court record  
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10 B.  Defendant poses a serious flight risk based on: defendant's  
11 undocumented status, & criminal  
history, multiple parole violations, and  
dangerous.

12 C.  A serious risk exists that defendant will:

13 1.  obstruct or attempt to obstruct justice;

14 2.  threaten, injure or intimidate a prospective  
15 witness or juror or attempt to do so;

16 based on: defendant's  
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20 D.  Defendant has not rebutted by sufficient evidence to  
21 the contrary the presumption provided in 18 U.S.C.  
22 § 3142(e) that no condition or combination of  
23 conditions will reasonably assure the safety of any  
24 other person and the community;

25 and/or  
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( ) Defendant has not rebutted by sufficient evidence to the contrary the presumption provided in 18 U.S.C. § 3142(e) that no condition or combination of conditions will reasonably assure the appearance of defendant as required.

IT IS ORDERED that defendant be detained prior to trial.

7 IT IS FURTHER ORDERED that defendant be committed to the custody  
8 of the Attorney General for confinement to a corrections facility  
9 separate, to the extent practicable, from persons awaiting or serving  
10 sentences or persons held in custody pending appeal.

11 IT IS FURTHER ORDERED that defendant be afforded reasonable  
12 opportunity for private consultation with defendant's counsel.

13 IT IS FURTHER ORDERED that, on Order of a Court of the United  
14 States or on request of an attorney for the Government, the person in  
15 charge of the corrections facility in which defendant is confined  
16 deliver defendant to a United States Marshal for the purpose of an  
17 appearance in connection with a court proceeding.

DATED: 11/18/08

  
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HONORABLE JACQUELINE CHOOIJIAN  
United States Magistrate Judge